

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MICHAEL A GALLUZZO,

Petitioner,

: Case No. 3:19-CV-171

- vs -

District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

SCOTT SPRINGHETTI,
Director, Tri-County Regional Jail,

:

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus case under 28 U.S.C. § 2254 is before the Court on Petitioner's second Motion for Summary Judgment (ECF No. 29).

When Petitioner sought summary judgment in September 2019, the Magistrate Judge recommended denial and wrote

This case is stayed because the Second District Court of Appeals has not yet decided Petitioner's direct appeal from his conviction. Once that happens if Petitioner is unsuccessful, he will have an opportunity to place his case before the Supreme Court of Ohio on appeal, rather than by collateral attack.

(Report and Recommendations, ECF No. 24). Judge Rice adopted that Report when Petitioner made no objection (ECF No. 25).

Although the Second District Court of Appeals has now affirmed Petitioner's conviction, he still has not exhausted a direct appeal to the Supreme Court of Ohio and his time to seek review by that court has not yet expired. If Petitioner fails to exhaust his remedy of direct appeal to the

Ohio Supreme Court, he will have procedurally defaulted all claims he raised on direct appeal *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999).

The Magistrate Judge also notes Petitioner's motion had no accompanying memorandum to argue why Petitioner is entitled to judgment.

Therefore Petitioner's second Motion for Summary Judgment should be denied.

March 3, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).